

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

VICTORIA RENTAS GUTIERREZ

Plaintiff,

v.

JARRED TATE, ET AL.

Defendants.

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CIVIL NO. SA-18-CV-00097

**DEFENDANT'S NOTICE OF REMOVAL**

COME NOW Defendant Jarred Tate, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorney, and hereby files this Notice of Removal pursuant to 28 U.S.C. § § 1441(a), 1442(a)(1), 1446(a), and 2679(d)(2) in order to remove the above-entitled action now pending in the County Court at Law No. 10 in Bexar County, Texas as Case Number 2017CV06902. In support of this Notice of Removal, Defendant states as follows:<sup>1</sup>

**I. BACKGROUND**

1. On December 4, 2017, Plaintiff Victoria Rentas Gutierrez filed suit in County Court at Law No. 10 in Bexar County, Texas, styled as follows: Victoria Rentas Gutierrez v. Jerrad Tate, et al. Attached as Exhibit 1 is a copy of the Citation and Plaintiff's Original Petition filed in state court.
2. The Petition alleges that Jarred Tate was negligent in the operation of a motor vehicle, which caused a collision with Plaintiff's vehicle. Plaintiff alleges this collision caused some

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<sup>1</sup> Contemporaneously with the filing of this Motion, proposed party Defendant United States of America has filed motion to dismiss Tate in this action and to substitute itself as defendant. 28 U.S.C. § 2679(d)(2).

amount of personal injury. Petition incorrectly refers to Jarred Tate as an employee of Signature Flight Support Corporation and furthered sued Signature Flight Support Corporation under a theory of *Respondeat Superior*.

3. Jarred Tate is an active duty Lieutenant in the United States Navy. He is not now, and has never been, an employee of Signature Flight Support Corporation.

4. The Citation was issued on January 9, 2018. LT Tate received a copy of the Petition and Citation and gave it to his Judge Advocate General's Office on January 24, 2018. The United States Navy's Torts Claim division forwarded the Petition and Citation to the United States Attorney's Office for the Western District of Texas the same day.

5. The United States certifies that LT Tate was an employee of the United States Navy who was acting within the course and scope of his employment at the time of the alleged acts giving rise to this lawsuit. (Exhibit 2).

## **II. REMOVAL**

6. Because the alleged negligent acts were made by LT Tate while in the scope of his service with the United States Navy, Plaintiff's exclusive remedy lies under the Federal Tort Claims Act ("FTCA"). 28 U.S.C. §§ 1346(b)(1), 2671 *et seq.* Upon certification of the Attorney General (or his designee) that LT Tate was acting in the scope of his federal service, this action "shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending." 28 U.S.C. § 2679(d)(2). Furthermore, such action can *only* proceed under the FTCA, and Plaintiff's lawsuit "shall be deemed to be an action or proceeding brought against the United States under the provisions of this title. . . and the United States shall be substituted as the party defendant." *Id.*

7. This Notice of Removal is made pursuant to the applicable provisions of 28 U.S.C. §§ 1442(a)(1), 1446(a), and 2679(d)(2). Removal is also proper under 28 U.S.C. 1441(a) because this Court has original jurisdiction over federal questions under 28 U.S.C. § 1331, and this action alleges tort claims that implicate the FTCA. Venue is proper in this district and division because Plaintiff's state court action was filed in Bexar County. 28 U.S.C. § 2679(d)(2).

8. Pursuant to 28 U.S.C. § 1446(a), attached is a true and correct copy of all process, pleadings, and orders received by LT Tate (Exhibit 1). Upon request by the Court, Defendant will file in this Court copies of all records filed in the state court action before this removal. 28 U.S.C. § 1447(b).

9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed today with County Court at Law #10, Bexar County, Texas. A true and correct copy of the Notice to the state court submitting this filed Notice of Removal is attached hereto as Exhibit 3.

10. Pursuant to Local Court Rule CV-3(a), a JS 44 Civil Cover Sheet is attached hereto as Exhibit 4. Because this case is being initiated via removal, a Supplement to JS 44 is attached as Exhibit 5.

Respectfully submitted,

**JOHN F. BASH**  
United States Attorney

By: /s/James E. Dingivan  
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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of January 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and served the following by certified mail delivery on:

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Margaret Vera  
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/s/James E. Dingivan  
**JAMES E. DINGIVAN**  
Assistant United States Attorney